CF 100 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. 712 /2004

PETITIONER - Mohhamad Usman
S/o Late Shri Sheikh Usman
aged about 57 years
R/o Baijnathpara,
Raipur (C.G.)

VERSUS

RESPONDENT

1. Municipal Corporation Raipur
though Commissioner Municipal
Corporation Raipur
Distt. Raipur (C.G.)

2. State of Chhattisgarh
through Secretary
Urban Department &
Administration
D.K.S. Bhawan,
Raipur (C.G.)

P.R. No. 7 FEB 2004
Presented by Shri Vijay Bhojwani
dated 03.03.04

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3/3/04
for A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT, ORDER OR DIRECTIONS OR LIKE ETC.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक WP 712/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2-8-2005 Shri Gautam Bhaduri, counsel for the petitioners in W. P. Nos.711/2004, 712/2004 and 714/2004. Shri B. P. Sharma, Advocate for the Municipal Corporation/respondent No.1. Shri Sandeep Dubey, Govt. Advocate for the State/respondent No.2. By this common order W. P. Nos. 711/2004, 712/2004 and 714/2004 are being disposed of as the above writ petitions relate to the same issue. The petitioners have preferred these writ petitions under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the notice Annexure-P/1 dated 16-2-2004 whereby the petitioners were prohibited from doing the business of mutton on Amardeep Talkies Road, which is not a prescribed place under the licence. The petitioners were further directed that by 20th February 2004, they should close the business of mutton and if the compliance is not made, then appropriate action will be initiated against the petitioners. The petitioners' case is that they are carrying their business since last more than 30-40 years in the market area of Jawahar Nagar Market, more popularly known as mutton market and all of a sudden, respondent issued a notice on 16-2-2004 to close down the	

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आदेश पत्रक

मामला क्रमांक WP 7120 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mutton shops by 20th February 2004. In that market at least 15-20 butchers are selling mutton to the public at large and the said market is established since last more than 40 years. The said market is recognized by the Municipal Corporation. Side by side, they are also selling chickens and eggs and are earning their livelihood. For that purpose the licence was granted by the respondent Corporation to do the business during the financial year 2003-04 and the tax is also being paid by the petitioners which is evident from Annexure-P/3. In para-5.8 it has been mentioned that after filing of these petitions respondent No.1 has refused to issue the necessary forms/applications to the petitioners for renewal of their licences for selling meat. The petitioners are carrying on their business of sale of meat at Jawahar market, Raipur which is adjacent and opposite to Amardeep Talkies for more than 35 years. It has been prayed that respondents be directed to renew their licences and notice Annexure-P/1 be quashed.

Return has been filed on behalf of respondent No.1, Municipal Corporation in which it has been mentioned that it is evident from the notice itself that the petitioners are selling meat at the place other than the place earmarked under the licence which was granted to them for selling meat. The petitioners are not entitled to carry on the selling of mutton in contravention of the provisions of Section 255 of the Chhattisgarh Municipal Corporation Act, 1956 (for short 'the Act,

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आदेश पत्रक

मामला क्रमांक 229 7/2/97 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1956') that is why the petitioners were called upon by the respondents to close down the said business at the un-licenced place by 20th February 2004. The petitioners are licenced to carry on the said sale at the specific shop at Jawahar Market, Raipur. From perusal of Annexure-P/1 & P/2 it will be clear that the petitioners have been granted licence to sell the meat at Jawahar Market, Raipur and the petitioners are carrying on the said sale at Amardeep Talkies Road, Raipur, thus the petitioners impliedly admit contravention of the provisions of law. The writ petition No.3471/2003 (Ku. A. Indira and another Vs. State of C.G. and others) was filed in which this Court directed the petitioners to make a representation before the answering respondents and in turn answering respondents were directed to pass appropriate order as per legal provisions. After the representation was made, the answering respondent has been called upon to comply with the provisions of the Act and, therefore, respondents issued the notice to the petitioners.

I have heard learned counsel for the parties and perused the record.

Shri Gautam Bhaduri, learned counsel for the petitioners argued that the petitioners are carrying on the sale under the licence Annexure-P/2 and, therefore, notice of the respondents was without jurisdiction.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...WP...712/04... सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Whereas, Shri B. P. Sharma, learned counsel for respondent No.1 argued that municipal corporation has fixed the market for the purpose of selling of mutton and other items and the petitioners were granted licence for carrying on their sale in the said market, whereas the petitioners are selling outside the market at Amardeep Talkies Road after taking shops on rent from private persons. The petitioners have been allotted some shops by the municipal corporation to sale the meat. Apart from that, the petitioners are also carrying on their business outside the market at Amardeep Talkies Road against which notice was issued to the petitioners and that too on the complaint of local people and also in view of the direction of this Court in W. P. No. 3471/2003.

Having heard learned counsel for the parties and having perused the record, it is admitted position that the petitioners were granted permission vide Annexure-P/2 to carry on sale of mutton in Jawahar Market, Raipur. During the course of arguments, map of Jawahar Market was shown in which all the shops are constructed in the Jawahar Market and they are not abutting on the Amardeep Talkies Road and the shop No.20 and 21 has been allotted to the petitioner in W.P.No.711/2004 whereas, notice Annexure-P/1 has been given to the petitioners for stopping the business of mutton on the Amardeep Talkies Road. It is evident from Annexure-R/4 filed by respondent No.1 which is report of the Health Officer dated 7-2-

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आदेश पत्रक

मामला क्रमांक WP/712/2004 सन् 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2004, that the shops of Jawahar Market are in damaged condition, therefore, they are not carrying on sale in the Jawahar Market and they are carrying on sale on Amardeep Talkies Road. In this connection, Section 255 of the Act, 1956 is relevant which envisages that 'without a licence from the Commissioner no person shall sell or expose for sale any animal or any meat or fish intended for human food in any place other than a Corporation or licensed market.' Under this provision Jawahar market has been fixed by the Municipal Corporation for selling of mutton and other items for which the petitioners have been granted licence, therefore, the petitioners are not entitled to carry on sale of mutton other than the place fixed place i.e. at Amardeep Talkies Road, as such the notice impugned calling upon the petitioners not to carry on the sale on Amardeep Talkies Road does not suffer from any infirmity and illegality, therefore, the petitioners to this extent are not entitled for the relief sought for.

As far as the question for renewal of licence is concerned, there are allegations that on account of filing of writ petition, the respondent corporation is not giving application forms to the petitioners for applying for renewal of licence, particularly, when the respondent corporation has already fixed Jawahar market for the sale of meat and other items, in all fairness, respondent corporation ought to have supplied application forms as asked for by the

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आदेश पत्रक

मामला क्रमांक WP/712/सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	petitioners for renewal of the licence and ought to have decided their applications in accordance with law. In the result, the above petitions are dismissed to the extent of notice Annexure-P/1. However, respondent corporation is directed to supply application forms for renewal of licence of the petitioners and after submitting the forms by the petitioners, to consider the applications for renewal of the licence in accordance with law. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	
Barve		

(पीछे देखिये)